164-686

164-686

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. ~~511~~. 213

THE UNITED STATES AND THE SIOUX NATION OR TRIBE OF INDIANS, APPELLANTS,

vs.

THE NORTHWESTERN EXPRESS, STAGE AND TRANSPORTATION COMPANY.

APPEAL FROM THE COURT OF CLAIMS.

FILED JANUARY 14, 1895.

(15771.)

"corporations, through receivers appointed by the court,
"not by virtue of its inherent jurisdiction, but under
"statutory authority, the statute which authorized their
"appointment, also prescribing with great minuteness
"their powers and duties.

The Act of 1825 was copied in New Jersey the next year, and has since been followed over pretty much the whole world.

The judgment should be affirmed.

FREDERICK W. HOLDEN,
EDWARD WINSLOW PAIGE,
Of Counsel.

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INDEX.

	Original.	Print.
Caption	1	1
Petition	1	1
Traverse	2	2
Amended petition	3	2
Findings of fact	5	3
Conclusions of law	5	3
Memorandum as to no opinion	5	3
Judgment	6	4
Application for and allowance of appeal	7	4
Clerk's certificate	8	4

1 In the Court of Claims. December term, 1890.

NORTHWESTERN EXPRESS, STAGE AND Transportation Company,
vs.
THE UNITED STATES AND THE SIOUX Tribe of Indians.

Indian Depredation.
No. 1068.

1.—*Petition. Filed April* 27, 1891.

To the Honorable the Court of Claims:

The claimant respectfully represents:

I. That said company is a corporation organized under the law of Minnesota, having its principal place of business at St. Paul, Minnesota.

II. That the following property belonging to claimant, a citizen of the United States, was taken by Indians of a tribe or nation then in amity with the United States, the date, place, and tribe being particularly stated below.

In Cedar Cañon, on or about the 5th day of February, 1879, by Sioux:

4 horses, at $200	$800.00
1 set harness (4-horse)	95.00
Total	$895.00

III. This claim with others was included in a bill introduced by Hon. C. K. Davis, Senate file No. 2880, for the relief of the Northwestern Express, Stage and Transportation Co., was read twice by its title and referred to the Select Committee on Indian Depredation', Feb'y 26th, 1890.

IV. That no other action than as aforesaid has been had on this claim in Congress or by any of the Departments; that the claimant is the sole owner of this claim, and the only person interested therein; and no assignment or transfer of this claim, or of any part thereof or interest therein, has been made; that the claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets; that the claimant is a citizen of the United States. And the claimant believes the facts as stated in this petition to be true.

And the claimant prays judgment upon the facts and the law in the sum of eight hundred and ninety-five dollars.

JOHN B. SANBORN,
Attorney for Claimant.
CHARLES & WM. B. KING,
Counsel.

STATE OF MINNESOTA,
County of Ramsey, ss:

R. Blakeley, being duly sworn, deposes and says: I am an officer, to wit, the president of the claimant in this case. I have read above petition, and the matters therein stated are true to the best of my knowledge and belief.

R. BLAKELEY, *President.*

Subscribed and sworn to before me this 13th day of April, 1891.

[SEAL.] JOHN M. BLAKELEY,
Notary Public, Ramsey County, Minnesota.

2 II.—*Traverse.* *Filed June* 8, 1891.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

JOHN B. COTTON,
Ass't Attorney-General.

3 NORTHWESTERN EXPRESS, STAGE AND TRANSPORTATION COMPANY
vs.
THE UNITED STATES AND THE YANKTONNAIS, TWO KETTLES, SANS ARCS, MINNECONJON, BLACKFEET, ONCPAPA, BRULE, AND OGALLALLA BANDS OF SIOUX, AND THE SIOUX TRIBE, AND THE NORTHERN ARAPAHOE AND ARAPAHOE TRIBES OF INDIANS.

Indian Depredation. No. 1068.

III.—*Amended petition.* *Filed by leave of court March* 3, 1894.

To the Honorable the Court of Claims:

The claimant, Northwestern Express, Stage and Transportation Co., respectfully represents:

I. That said company is a corporation organized under the laws of Minnesota, having its principal place of business at St. Paul, Minnesota.

II. That the following property belonging to claimant, who was at that date a citizen of the United States, was taken by Indians of a tribe or nation then in amity with the United States, the date, place, and tribe being particularly stated below.

In Cedar Cañon, on or about the 5th day of February, 1879, by Sioux Indians, viz, Yanktonnais, Two Kettle, Sans Arcs, Minneconjon, Blackfeet, Oncpapa, Brule, and Ogallalla bands of Sioux, and Arapahoe Indians, viz, the Northern Arapahoe Indians:

4 horses, at $200	$800
1 set harness (4-horse)	95
Total	$895

That said Indians were chargeable for said depredation by reason of a treaty between said Indians and the United States.

III. That a claim for said property, with evidence therein, was presented to the Commissioner of Indian Affairs, the items of said claim being as heretofore stated.

This claim, with others, was included in a bill introduced by Hon. C. K. Davis, Senate file #2880, for the relief of the Northwestern
4 Express, Stage and Transportation Co., was read twice by its title and referred to the Select Committee on Indian Depredations February 26, 1890.

That no action was taken thereon.

IV. That no other action than as aforesaid has been had on this claim in Congress or by any of the Departments; that the claimant is the sole

owner of this claim and the only person interested therein; and no assignment or transfer of this claim, or of any part thereof or interest therein, has been made; that the claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets; that the claimant is a citizen of the United States. And the claimant believes the facts as stated in this petition to be true.

And the claimant prays judgment upon the facts and the law in the sum of eight hundred and ninety-five dollars.

JOHN B. SANBORN &
CHARLES & WILLIAM B. KING,
Attorneys for Claimant.

DISTRICT OF COLUMBIA,
County of , *ss:*

Charles King, being duly sworn, deposes and says: I am one of the attorneys for the claimant in this case. I have read above petition, and the matters therein stated are true to the best of my knowledge and belief.

CHARLES KING.

Subscribed and sworn to before me this 24th day of Feb'y, 1894.
[SEAL.] S. A. PERRY,
Notary Public.

5 IV.—*Findings of fact and conclusions of law. Filed May* 7, 1894.

The court upon the evidence finds the following facts:

I.

The claimant is and was at the time of the depredation hereinafter mentioned a corporation created under and by virtue of the laws of the State of Minnesota, and was transacting the business of a common carrier in conveying passengers and freight at the time referred to.

II.

The claimant during the year 1879 was engaged in carrying the mails and doing the business of a common carrier from Bismarck, Dakota, to Deadwood and the Black Hills upon the Territorial road from Bismarck to Cook Station, in part through the Great Sioux Reservation.

III.

On the 5th of February, 1879, near Cedar Canyon, property belonging to the claimant, consisting of four horses and their harness, was taken or destroyed by Indians of the defendant's tribe, the same being of the value of $750. The defendant Indians were at the time in amity with the United States, and the depredation was committed without just cause or provocation on the part of the claimant or its agents and the property has not been returned or paid for. The claim has not been approved or allowed by the Secretary of the Interior.

CONCLUSIONS OF LAW.

Upon the foregoing findings of fact the court decides as conclusions of law:

1. Under the decision of the Supreme Court in the case of Muller vs. Downs (94 U. S. R., 444), the claimant must be regarded as a citizen of the United States for the purposes of this action, and the citizenship of the original corporators can not be inquired into.

2. The claimant should recover for the amount of losses sustained ($750) seven hundred and fifty dollars.

BY THE COURT.

The court filed no opinion in this case.

6 5.—*Judgment of the court.*

At a Court of Claims held in the city of Washington on the 7th day of May, A. D. 1894, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said The Northwestern Express, Stage and Transportation Company do have and recover of and from the United States and the Sioux tribe or nation of Indians, committing the wrong for which this judgment is rendered, the sum of seven hundred and fifty dollars, of which sum there is allowed John B. Sanborn, the claimant's attorney, for prosecuting said claim, the sum of one hundred and fifty dollars, fixed by the court according to the provisions of the act of March 3, 1891.

BY THE COURT.

7 *Application of defendants for and allowance of appeal.*

Comes the Assistant Attorney-General, and excepting to the judgment of the court heretofore, to wit, on May 7th, 1894, rendered in favor of the claimant corporation in this cause, prays an appeal therefrom to the next term of the Supreme Court of the United States.

CHAS. B. HOWRY,
Asst. Attorney-General.

Filed June 25, 1894.

Allowed in open court December 24, 1894.

WILLIAM A. RICHARDSON,
Chief Justice.

8 In the Court of Claims.

THE NORTHWESTERN EXPRESS, STAGE AND Transportation Company
vs.
THE UNITED STATES AND THE SIOUX TRIBE or Nation of Indians.

Indian depredation.
No. 1608.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-

entitled cause of the findings of fact by the court, and the conclusions of law thereon, of the judgment of the court of the application of defendants for and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this second day of January, A. D. 1895.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk Court of Claims.

9 (Indorsement on cover:) Court of Claims Case No. 15771. Term No., 511. The United States and the Sioux Nation or Tribe of Indians, appellants, vs. The Northwestern Express, Stage and Transportation Company. Filed January 14, 1895.

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Office Supreme Court, U. S.
FILED
OCT 26 1896
JAMES H. MCKENNEY,
CLERK

THE LAW ASSOCIATION
OF
PHILADELPHIA.

164-686

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

THE UNITED STATES AND THE SIOUX Nation or Tribe of Indians, appellants,
v.
THE NORTHWESTERN EXPRESS, STAGE and Transportation Company.
} No. 213.

ASSIGNMENT OF ERRORS.

BRIEF OF CHARLES B. HOWRY, ASSISTANT ATTORNEY-GENERAL, FOR THE UNITED STATES AND OTHERS.

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

THE UNITED STATES AND THE SIOUX Nation or Tribe of Indians, appellants,
v.
THE NORTHWESTERN EXPRESS, STAGE and Transportation Company.
No. 213.

ASSIGNMENT OF ERRORS.

Come the United States and the Sioux Nation or tribe of Indians, by the Assistant Attorney-General charged with the defense of Indian depredation claims, and say that the conclusions of law announced by the Court of Claims in this cause were erroneous and the judgment rendered upon these conclusions was wrongful, and for causes of error the said appellants say:

(1) The court erred in holding that a private corporation in Minnesota must be regarded as a citizen of the United States for the purposes of this action.

(2) In holding that the citizenship of the original corporators can not be inquired into.

Wherefore the appellants pray the court to reverse the judgment of the Court of Claims and to render judgment in their favor.

CHAS. B. HOWRY,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

THE UNITED STATES AND THE SIOUX Nation or Tribe of Indians, appellants,
v.
THE NORTHWESTERN EXPRESS, STAGE and Transportation Company, appellees.
No. 213.

BRIEF OF CHARLES B. HOWRY, ASSISTANT ATTORNEY-GENERAL, FOR APPELLANTS.

This case is brought to this court by appellants on appeal from a judgment of the Court of Claims rendered against appellants on the 17th day of May, 1894. The Court of Claims, among its findings of fact, found "that the claimant is, and was at the time of the depredation hereinafter mentioned, a corporation created under and by virtue of the laws of Minnesota, and was transacting the business of a common carrier in conveying passengers and freight at the time referred to." It also found that claimant had sustained the loss complained of by Indians belonging to the tribe of Sioux Indians, and that they at

the time were in amity with the United States, and that the depredation was without provocation on part of claimant; finding the value of the property lost to be $750. From these facts the court decides as a conclusion of law as follows:

> 1st. Under the decision of the Supreme Court in the case of *Muller* v. *Dows* (94 U. S. Rep., 444), the claimant must be regarded as a citizen of the United States for the purposes of this action, and the citizenship of the original corporators can not be inquired into.

And further concludes claimant should recover the amount of loss sustained.

Appellant contends that the lower court is in error as to its conclusions of law—

First. In holding that a private corporation of Minnesota must be regarded as a citizen of the United States for the purposes of this action.

Second. In holding that the citizenship of the original corporators can not be inquired into.

The decision of the Supreme Court, on which the court bases its decision, does not justify or warrant the conclusion at which the Court of Claims has arrived. In the case of Muller *v.* Dows, the court expressly holds that a corporation can be a *citizen* of no State in the sense in which the word is used in the Constitution of the United States, but for the purposes of *jurisdiction* of the Federal courts. Stockholders of a corporation created by any State will conclusively be presumed to be all citizens of that *State*. No presumption or inference that they are

citizens of the *United States*. The language of the court is this:

> A corporation itself can be a citizen of no State in the sense in which the word citizen is used in the Constitution of the United States. A suit may be brought in the Federal courts by or against a corporation, but in such case it is regarded as a suit brought by or against the *stockholders* of the corporation; and for the purposes of *jurisdiction* it is conclusively presumed that all of the stockholders are citizens of the State which, by its laws, created the corporation.

But suppose in the suit at bar you give full force and effect to this presumption, and say that all the stockholders are conclusively presumed to be citizens of the State of Minnesota, the State which, by its laws, created the corporation, the Northwestern Express, Stage and Transportation Company; or, make the case stronger, suppose all of said stockholders were in fact citizens of the State of Minnesota, would that be sufficient without more to justify a recovery or confer jurisdiction upon the Court of Claims under the act of March 3, 1891? The act prescribes that the depredation must be committed upon the property of the *citizens* of the United States.

No one but a *citizen* of the *United States* is authorized to sue or recover for a loss under this act. The act itself is clear beyond cavil in this respect. The Supreme Court has removed all doubt as to the meaning and scope of the act in that particular. It has expressly held that it is indispensably necessary that the party who seeks to recover for a loss under this act must have *been* a citizen

of the *United States* at the time of the alleged depredation. And if he was not a citizen of the *United States* at that time he was clearly outside of the statute, and the Court of Claims had no jurisdiction.

Johnson v. *United States*, 161 U. S., 546.

Then the question is, Does being a citizen of any particular State meet this requirement of the statutes? Does being a citizen of a State constitute such person a citizen of the United States? If not, then it is evident such person is not within the provisions of said act, and is not entitled to relief thereunder, unless it is shown that in addition to being a citizen of some one of the States he was also a citizen of the *United States*.

There is a well-defined difference between citizenship of a State and citizenship of the United States. They are not synonymous terms. No State can create or constitute a person or corporation a citizen of the United States. The fact that the defendant corporation has been considered a citizen of the *State* which gave it corporate existence, for the purpose of giving jurisdiction to the Federal courts, does not constitute it a citizen of the *United States* within the meaning of the Constitution nor of the act of March 3, 1891. It is one thing to be a citizen of the State and another to be a citizen of the United States. A State may clothe a person with the privilege of citizenship of that State, yet such person is not thereby made a citizen of the United States. In the celebrated case of *Dred Scott* v. *Sanford* this distinction is clearly drawn. The court in that case says:

> The words, people of the United States and citizens are synonymous terms and mean the same

thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and *conduct* the *government through* their representatives. They are what we familiarly call the sovereign people, and every citizen is one of this people, and constitutes a member of this sovereignty. * * * In discussing this question, we must not confound the rights of citizenship which a *State may confer within* its *own limits*, and the rights of citizenship as a member of the *Union*. It does not by any means follow because he has all the rights and privileges of a citizen of a State, that he must be a citizen of the United States. He may have all the rights and privileges of a State, and yet not be entitled to the rights and privileges of a citizen in any other State. * * * Nor have the several States surrendered the power of conferring these rights and privileges (of State citizenship) by adopting the Constitution of the United States. Each State may still confer them upon an *alien*, or anyone it thinks proper, or upon any class or description of persons; yet he would not be a citizen in the sense in which that word is used in the Constitution of the United States, nor entitled to sue as such in one of its courts, nor to the privileges and immunities of a citizen in the other States. The rights which he would acquire would be restricted to the State which gave them. * * * No State, since the adoption of the Constitution, can, by *naturalizing* an *alien*, invest him with the rights and privileges secured to a citizen of the State under the Federal Government, although, so far as the State alone is concerned, he would undoubtedly be entitled to the rights of a citizen, and clothed with all the rights and immunities which the Constitution and laws of the State attach to that character.

The same distinction between a citizen of a State and of the United States is recognized since the adoption of the Thirteenth, Fourteenth, and Fifteenth amendments to the Constitution of the United States, whose prime object was to clothe the negro with freedom and citizenship. The Supreme Court in construing those amendments in the *Slaughterhouse Cases* (83 U. S., 36), and discussing their effect upon the citizenship of a State, says:

> The next observation is more important in view of arguments of counsel in the present case. It is that the distinction between citizenship of the United States and citizenship of a State is clearly recognized and established (by the fourteenth amendment). Not only may a man be a citizen of the United States without being a citizen of a State, but an important element is necessary to convert the former into the latter. He must reside within a State to make him a citizen of it, but it is only necessary that he should be *born* or *naturalized* in the United States to be a citizen of the Union. It is quite clear, then, that there is a citizenship of the United States and a citizenship of a State, which are distinct from each other and which depend upon different characteristics or circumstances in the individual.

In the act of March 3, 1891, only citizens of the United States are mentioned, and it does not speak of citizens of the State. In this connection, the language of the court in the Slaughter House cases is of much force. The court says:

> We think this distinction and its explicit recognition in this amendment [fourteenth amendment] of great weight in this argument, because the next paragraph of this same section, which is the one

mainly relied on by plaintiffs in error, speaks only of privileges and immunities of citizens of the *United States* and does not speak of those of citizens of the *several States*.

Then, again, the Constitution of the United States, and the acts of Congress carrying out its provisions, in determining the jurisdiction of the circuit courts of the United States, uses the term citizen, referring to and meaning citizens of the different States, and authorizing, where there is divers citizenship as to States, suits in the Federal courts. Therefore, under these statutes, the courts have eventually settled the doctrine that a corporation created by the laws of a State will, for the purpose of jurisdiction, be considered a citizen of the State giving it corporate life, and to reach this result they have thrown around it a *conclusive* presumption that its stockholders are all citizens of such State, not that they are citizens of the United States. A corporation, as has been shown, itself can in no sense be a citizen in the sense that word is used in the Constitution.

It has also been shown that a corporation being a citizen of a State for the purpose of suit in the Federal courts does not make it in any sense a citizen of the United States, nor does the presumption that all its stockholders are citizens of that State make them citizens of the United States.

From the time of the cases of *Strawbridge* v. *Curtiss* (3 Cranch., 267) and the ably considered cases of the *Bank of the United States* v. *Deveaux* (5 Cranch., 84) to the case of the *Railroad Company* v. *Letson* (2 How.,

497) it was the rule of the Federal courts that even for the purpose of jurisdiction corporations were not considered citizens of the State which created them, but the citizenship of the stockholders determined the citizenship of the corporation. In the case of the *Railroad Company* v. *Letson*, the court reviewed the former cases on this subject and declined to follow them, and for the first time announced the rule that a corporation created by the laws of a State for the purposes of suits in the Federal courts were to be considered citizens of the State which created them.

In arriving at this conclusion, however, the act of Congress of 1839 enlarging the jurisdiction of the Federal courts partly influenced and controlled the decision. But this rule, which has since been followed by the Federal courts, does not clothe a corporation of a State with the attributes, privileges, and immunities of a citizen of the United States. A corporation aggregate is an artificial, invisible body, existing only in contemplation of law. It has no analogy to an actual person. It can not sue for a personal injury. It can not be outlawed. It is not subject to attachment for contempt. It can not owe allegiance to any State. It can not commit treason or felony. It can not appear in person but must appear by attorney, and in many other respects it differs from a natural person or citizen.

The act of March 3, 1891, never intended to indemnify and reimburse losses sustained by any person but those who at the time of the loss were citizens of the United States—persons who owed allegiance to the United States.

If private corporations of a State are to be included within its terms, then aliens, who are not subject to the jurisdiction of the United States, and who owe the United States no allegiance, can recover under said act and receive from the United States the bounty and gratuitous indemnity offered by this Government to its citizens under this law. The shareholders of a corporation are the owners and beneficiaries thereof, and if private corporations of a State are to be made citizens within the spirit and meaning of said act, then alien shareholders and owners of the corporation are made the recipients of the United States' bounty.

The act warrants no such construction, and Congress intended no such consequences.

CHARLES B. HOWRY,
Assistant Attorney-General.

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DEC 5 1896
JAMES H. McKENNEY,
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

THE UNITED STATES AND THE SIOUX nation or tribe of Indians, appellants,
v.
THE NORTHWESTERN EXPRESS, STAGE and Transportation Company, appellee.
No. 213.

REPLY BRIEF OF APPELLANTS.

CHARLES B. HOWRY,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

THE UNITED STATES AND THE SIOUX nation or tribe of Indians, appellants,
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REPLY BRIEF OF APPELLANTS.

AS TO JURISDICTION BY REASON OF PARTIES.

The unquestioned statement that the record fails to disclose affirmatively a jurisdictional fact, namely, *the United States citizenship of the defendant corporation*, would seem to dispose of this claim, notwithstanding the reasoning and earnest contention in support of the jurisdiction.

The act under which the claim of the defendant corporation is brought provides, *inter alia*—

> That in addition to the jurisdiction which now is, or may hereafter be, conferred upon the Court of Claims, said court shall have and possess *jurisdiction and authority* to inquire into and finally adjudicate, in the manner provided in this act, all claims of the following classes, namely, all claims for property of *citizens* of the United States, etc.; that all claims

> shall be presented by petition setting forth the facts upon which such claims are based * * * *and any other facts connected with the transactions and material to the proper adjudication of the case involved.* The petition shall be verified by the affidavit of the claimant, his agent, administrator, or attorney. * * * It shall set forth the full name and residence of the claimant. * * * (Act March 3, 1891, secs. 1, 3, 26 Stat. L., p. 851.)

The rule of the Court of Claims in reference to claims under the act cited requires that "the petition shall set forth the full Christian and surnames of all the claimants * * * and the residence and citizenship of each of the claimants. * * * (Rule 17.)

The meager averment of the petition in reference to citizenship and residence is in this language:

> That said company is a corporation organized under the law of Minnesota, having its principal place of business at St. Paul, Minn.; that the following property belonging to claimant, a citizen of the United States, was taken, etc. (R., p. 1.)

The petition is verified as follows: "R. Blakeley, being duly sworn, deposes and says: 'I am an officer, to wit, the president of the claimant in this case. I have read above petition, and the matters therein stated are true to the best of my knowledge and belief.'" (R., p. 1.) An amended petition repeats in terms the averments in respect to incorporation and place of business, with the additional averment that at the date of the taking of the property claimant was a citizen of the United States; and in its concluding paragraph sets forth "that the claimant is a citizen of the United States." (R., pp. 2, 3.)

It is submitted that upon the record defendant corporation has not brought itself within the requirements of the act of Congress or of the rules of the Court of Claims. The affidavit of the president of the corporation fails to disclose the citizenship of himself or his associates at the date of the taking of the property, or at any other date. It has failed to file any affirmative or usual proof of corporate character, such as a certified copy of charter or certificate of incorporation; and evidently relies upon the presumptions that it is a duly organized corporation under the law of Minnesota, that a State corporation is composed of citizens of the United States, and that as a consequence such a corporation is a citizen of the United States.

In *Johnson's Case* (160 U. S., 546) this court has decided that a claimant must have been a citizen of the United States at the *date of the depredation*. As a jurisdictional fact, such citizenship must be established affirmatively, whether it be that of a "natural" or "artificial" person; and no presumption in favor of such citizenship can be indulged in respect of either without extending the jurisdiction beyond the plain limitations of the act. The terms of the act and the rules of the Court of Claims in reference to Indian depredations do not contemplate the appearance of an "artificial" person as a claimant; but if such present their claims, it is submitted that the court can only take cognizance of them upon a literal compliance with the provisions of the jurisdictional act. The Court of Claims is a court of special and limited jurisdiction. The act under which appellee brings its

suit is special and limited, and may not be extended without invading legislative functions.

The Court of Claims has no general jurisdiction over claims against the United States; it can take cognizance of only those matters which by the terms of some act of Congress are committed to it. (*Schillinger* v. *United States*, 155 U. S., 163; *Johnson* v. U. S., 160 U. S., p. 546.) If there appears to be legislative casus omissus, it is for the legislative branch to supply the omission. "It is the true office of interpretation in doubtful cases to repel rather than absorb jurisdiction, on the well-understood principle that presumptions are against the jurisdiction of courts whose powers are limited."

It can not be said that defendant corporation has brought itself within the terms of this act.

If the court upon the record should entertain jurisdiction of this claim, in which there is no affirmative or proper averment or proof of the United States citizenship, after declining jurisdiction in *Johnson's Case* (160 U. S., p. 546), this result might and probably would follow. The court would have denied jurisdiction in a case brought by an individual who was at the time of the filing of the petition, though not at the date of the depredation, a citizen of the United States, while entertaining jurisdiction of the claim of associated individuals, whose United States citizenship does not affirmatively appear either at the date of the depredation or at the filing of the petition or at any other date. It would seem that the reasoning which would exclude the former case would apply with equal force to exclude the latter. In this connection it may be observed that all the earlier acts of Congress

specified "inhabitant," as well as "citizen," as within the statutory indemnity, while the act of March 3, 1891, omits the word "inhabitant." (Acts May 19, 1796, 1 Stat. L., 472; March 3, 1799, 1 Stat. L., 747; March 30, 1802, sec. 14, 2 Stat. L., 143; June 30, 1834, sec. 17, 4 Stat. L., 731; February 28, 1859, sec. 8, 11 Stat. L., 401; sec. 2156, Rev. Stats.)

Counsel for appellee (Brief, p. 2) relies upon the decision of this court in *Railroad Company* v. *Letson* (2 How., 497) and the cases following it. Of this decision in its application as authority upon the point cited it may be said that in the early days two competing theories were entertained as to the appropriate distribution and extent of judicial power between the States and Federal Government by reason of the character of the parties to the litigation. The first theory restricted the jurisdiction of the Federal courts to cases in which there was an express grant of judicial power. The second extended the jurisdiction to cases which were held to be actually included, though not in terms granted.

For a period of nearly fifty years the first theory prevailed and was sanctioned by the jurisprudence of the Federal courts, when, under circumstances and conditions which are appreciable, a departure from the earlier doctrine of the court was announced in Letson's Case.

It had been held in the early days that when the jurisdiction of the Federal court depended on the character of the parties, and such party consists of a number

of individuals, each one must be competent to sue in the courts of the United States or jurisdiction could not be entertained. (*Ward* v. *Arredendo et al.*, Paine's C. C. R., 410; *Strawbridge* v. *Curtis*, 3 Cranch, 265.) It was also held that the courts of the United States had not jurisdiction unless it appeared by the record that it belongs to them, as that the parties are citizens of different States. (*Wood* v. *Wagnon*, 2 Cranch, 9.)

In *Turner* v. *Bank* (4 Dall., p. 8) it was held that where an action is brought upon a promissory note in a Federal court by indorsee against the maker, not only the parties to the suit but also the payee must be stated on the record to be such as to give the court jurisdiction.

In 1809 it was said by Chief Justice Marshall, in deciding the case of the *Bank of the United States* v. *Deveaux* (5 Cranch, p. 87), that "The court feels itself authorized by the case in 12 Mod., on a question of jurisdiction, to look to the character of the individuals who compose the corporation, and they think that the precedents of this court, though they were not decisions on argument, ought not to be absolutely disregarded." In that case the political status of particular members of the corporation was noticed for the purpose of sustaining the jurisdiction, which could not otherwise have been supported. In 1844 the general subject of the jurisdiction of the Federal court founded upon the character of parties, in reference to Constitutional provisions and the judiciary acts came again under consideration; and, after a review of the earlier cases, it was said that the act of 28th of February, 1839, in amendment of the acts of the judicial system of the United States, was passed exclusively

with an intent to rid the courts of the decision in the case of *Strawbridge* v. *Curtis*. It was further said: "But if in all we have said upon jurisdiction we are mistaken, we say that the act of 28th of February, 1839, enlarges the jurisdiction of the courts, comprehends the case before us, and embraces the entire result of the opinion which we shall now give." (*R. R. Co.* v. *Letson*, 2 How., 555.) But the broader ground upon which the court rested its judgment in Letson's case is thus expressed: "It is, that a corporation created by and doing business in a particular State is to be deemed to all intents and purposes as a person, although an artificial person, *an inhabitant of the same State*, for the purposes of its incorporation, capable of being treated as a citizen of that State as much as a natural person." (*Ib.*, p. 555.)

It would seem that the fact that a corporation having *a residence* and being *an inhabitant* of a State influenced the decision of the court in Letson's Case, apart from any consideration of the purely *citizen status* of the corporators. This element of "residence" and "inhabitancy," as a ground for jurisdiction in the Federal courts, is deserving of notice in connection with the phraseology found in the earlier and later Indian depredation acts, which has been above indicated.

It is submitted that Letson's Case does not afford any support to the proposition that a claimant or claimants may bring himself or themselves within the jurisdictional clauses of the act of March 3, 1891, without disclosing his or their United States citizenship.

> Where the Federal jurisdiction depends upon the citizenship of the parties, such citizenship, or the

> facts constituting it, must be distinctly or positively averred in the pleadings or affirmatively appear in other parts of the record. (*Grace* v. *Amer. Cent. Ins. Co.*, 109 U. S., p. 278 (A. D. 1883), citing *Turner* v. *Bank*, 4 Dall., 8; *Ex parte Smith*, 94 U. S., 456; *Robertson* v. *Cease*, 97 *Id.*, 649; *Railroad Company* v. *Ramsey*, 22 Wall., 322; *Briggs* v. *Sperry*, 95 U. S., 401.)

In *Brown* v. *Keene* (8 Peters, 115) it is declared not to be sufficient that jurisdiction may be inferred argumentatively from averments in the pleadings; that the averments should be positive.

> An averment of residence is not equivalent of an averment of citizenship for the purposes of jurisdiction in the courts of the United States. * * * Unless the contrary appears affirmatively from the record, the presumption, upon error or appeal, is that the court below was without jurisdiction. (*Everhart* v. *Huntsville, etc.*, 120 U. S., 223, A. D. 1886; *Continental Ins. Co.* v. *Rhoads*, 119 U. S., 237.)

As *Turner* v. *Bank* (4 Dall., 8) has recently been cited with approval by the court in *Grace* v. *Am. Cent. Ins. Co.* (109 U. S., 278, A. D. 1883) on the question of jurisdiction, we cite the following extract from the opinion of the court in reference to the doctrines applied to courts of limited and general jurisdiction:

> A circuit court, said Ellsworth, Ch. J., though an *inferior* court in the language of the Constitution, is not so in the language of the common law; nor are its proceedings subject to the scrutiny of those narrow rules which the caution or jealousy of the courts at *Westminster* long applied to courts of that denomination, but are entitled to as liberal intendments or presumptions in favor of their regularity

> as those of any supreme court. A circuit court, however, is of *limited* jurisdiction, and has cognizance, not of cases generally, but only of a few specially circumstanced, amounting to a small proportion of the cases which an unlimited jurisdiction would embrace. And the fair presumption is not, as with regard to a court of general jurisdiction, that a cause is within its jurisdiction unless the contrary appears, but rather that a cause is without its jurisdiction till the contrary appears.

It does not seem necessary to further pursue the argument on this line, for there is no analogy between the extent of the judicial power exercised by the Federal courts under provisions of the Constitution and the judiciary act and the limited jurisdiction of the Court of Claims under provisions of the act of March 3, 1891. We are not now concerned with interpretation of the language of the Federal Constitution or of the provisions of the original and amended judiciary acts with reference to jurisdiction by reason of the parties.

Again, the controversy in the case at bar is not—as in Letson's Case, and *Muller* v. *Dows*, 94 U. S., p. 445, relied on by the Court of Claims to support the jurisdiction—between individuals, or individuals and private corporations to enforce ordinary rights or remedies generally cognizable by courts of justice; but is in the nature of a petition addressed by certain specified individuals to a Sovereign under provisions of a special act.

Until the passage of the Act of 1891 there was no existing liability on the part of the government in the

matter of these Indian depredations. By virtue of this act, the government assumed a large measure of liability; but it fixed the terms and conditions, and specified the parties in whose favor the liability would be recognized. "Congress did not by the act of 1891 assume, in behalf of the United States, responsibility for all acts of depredation by Indians, nor grant to the Court of Claims authority 'to inquire into and finally adjudicate' all claims therefor. It carefully specified those which might be considered by that court." (Johnson's Case, 160 U. S., p. 546.) The Sovereign is not ordinarily amenable to suit; and when submitting to be sued by individuals, whether aliens or citizens, his usage is to dictate to litigants as well as to courts the specific terms under which suit may be prosecuted. It is said by the court in a decision recently handed down: "The truth is, that in its dealings with individuals public policy demands that the government should occupy an apparently favored position." It is not for the courts in the exercise of so-called equity powers to either nullify or supply legislation because the result appears to them inequitable. (*United States* v. *Verdier*, appeal from the Court of Claims, decided November 16, 1896; Smoot's Case, 15 Wall., 36, 45.) No presumption in favor of jurisdiction will be entertained.

Without repeating what was said in our opening brief (pp. 6, 7, 8, 9, 10) in reference to the well-defined difference between citizenship of a State and citizenship of the

United States, it may be profitable to refer to several decisions which further illustrate this distinction, and show what extreme liberality is granted to aliens inhabiting some of the border States who have not yet acquired citizenship of the State or citizenship of the United States. *Citizenship* is distinguished from *alienism*, and denotes membership in the political society or state.

> *In re* Wehlitz, 16 Wisconsin, 446; *State* v. *Fowler*, 41 La State, 381; *State* v. *Abbott*, 41 La State, 1097; *Lanz* v. *Randall*, 4 Dillon, 425.

In *Lanz* v. *Randall* (4 Dill., 425), Mr. Justice Miller used this language:

> I am of opinion that no State can make the subject of a foreign prince a citizen of the State in any other mode than that provided by the naturalization laws of Congress. * * * But I do not place the decision of the present case on that ground. The State of Minnesota has not attempted to make the plaintiff a citizen of that State, nor do the provisions of her constitution, when applied to the condition of the plaintiff, have that effect. * * * These observations show that citizenship is not a sole criterion of the right to vote, and still more clearly that the right to vote may exist without citizenship. The latter *is precisely the case in Minnesota*. That State, by a wise policy, has invited an industrious and useful population from abroad to occupy her vacant territory, and, as an inducement, has said, "You need not wait till you are naturalized and become citizens to exercise the elective franchise and to become eligible to office. That process requires five years." When they have taken the first step toward becoming citizens by making the legal official declaration to that effect they are allowed to

> vote if they possess the other qualifications of age, sex, residence; but citizenship *is not one of them.**

The defendant corporation avers its habitat in Minnesota, under whose constitution any individual may, without any notable restriction, organize and be a member of corporate associations or joint stock companies, and without reference to citizenship. (Article 10.)

> "Under our complex system of government, there may be a citizen of a State who is not a citizen of the United States in the full sense of the term. This result would seem to follow unavoidably from the nature of the two systems of government. Each State being sovereign, except as to matters referred to the General Government, may, as an undoubted result of that sovereignty, confer such rights of citizenship as it pleases, so far as it relates to itself only. But the power having been delegated to Congress to pass uniform naturalization laws, and it being exclusive in its character, no State can confer such rights of citizenship upon an alien who has not complied with the laws of Congress, so as to make him a citizen of the United States, and entitled to the rights and privileges guaranteed to citizens by the Federal Constitution." (*In re Wehlitz*, Wisconsin Rep., 16, p. 446, A. D. 1862, citing *Scott* v. *Sanford*, 19 How., p. 405.)

It has been held by this court that there are certain rights, privileges, and immunities which attach solely to

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* According to the United States Census of 1880, the population of Minnesota was: Total of all classes, 780,773; whites, native, 509,373; whites, foreign born, 267,511; colored (including Chinese, Japanese, and civilized Indians), 3,889. (Vol. 1, p. 596.)

citizens of a particular State by virtue of such State citizenship, and which do not attach to general citizenship of the United States. (*McCready* v. *Virginia*, 94 U. S., p. 391.) Following the rule laid down in *Conner* v. *Elliot* (18 How., 593), the court said: "We think we may safely hold that the citizens of one State are not invested by this clause of the Constitution (Art. IV, sec. 2) with any interest in the common property of the citizens of another State." The right to appropriate for the purpose of raising oysters in the tide waters of the State of Virginia is not a privilege or immunity of general but of special citizenship. "It does not 'belong of right to the citizen of all free governments,' but only to the citizens of Virginia, on account of the peculiar circumstances in which they are placed." (*Ib.*, p. 419.)

The case above cited was decided at the same term of the court with *Muller* v. *Dows* (94 U. S., 444), which is relied upon as authority to sustain the jurisdiction of the Court of Claims in this case.

There is a state citizenship as distinguished from United States citizenship. Constitution of U. S., art. 4, sec. 2 (1); Cushing, El. Cases, 343; *Corfield* v. *Coryell*, 4 Wash., C. C., 371; *Conner* v. *Elliott*, 18 Howard, 591; *U. S.* v. *Cruikshank*, 92 U. S., 542; *Scott* v. *Sandford*, 19 How., 393.

There is nothing in this record to indicate that the incorporators of the defendant corporation, or any of them, are even citizens or residents of Minnesota.

It is not perceived how the reference to treaty stipulations between the United States and foreign governments in respect of the adjudication of the claims of corporations, companies, or private individuals, citizens of the United States, helps the contention on behalf of the appellee, for the reason that these provisions have reference to international reclamations. By uniform usage, governments confine their intervention in this relation to the presentation of the claims of their own citizens only, whose citizenship is always affirmatively established.

What has been said above in reference to the authority of Letson's Case will apply with equal force to the other cases relied on by counsel for the appellee. (Brief, pp. 4, 5, 6.)

Counsel for appellee (Brief, pp. 6, 7), in support of the jurisdiction, says, "Numerous cases exist in the statutes and treaties of the United States where the words 'citizens of the United States' are construed to include corporations. The right to purchase mineral deposits in the public lands is conferred upon 'citizens of the United States and those who have declared their intention to become such.'" (Sec. 2319, Rev. Stat., p. 425.) Section 2321 declares the method of proof of citizenship.

> SEC. 2321. Proof of citizenship, under this chapter, may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their

> authorized agent, made on his own knowledge or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any State or Territory thereof, by the filing of a certified copy of their charter or certificate of incorporation.

So far from sustaining a contention of counsel for appellee the above reference to legislative construction supports the view expressed on behalf of appellants. The section referred to provides in express terms for *proof of citizenship*. In the same relation an act of Congress (March 3, 1873, chap. 279, Stat. L., vol. 17, p. 607) contains the following provision for the entry of coal lands:

> Every person above the age of twenty-one years who is a citizen of the United States, or who has declared his intention to become such, *or any association of persons severally qualified as above*, shall, etc. (Rev. Stat., sec. 2348.)

Statutes conceding to associations of persons unincorporated and organized corporations the same rights as citizens for the development of mineral lands and the mining resources of the country are in pursuance of a public policy for the purposes indicated, and, instead of deriving a legislative construction from these exceptions in favor of corporations, it is more proper to say that the exceptions more clearly establish the necessity for some specific expression of Congress in behalf of corporations where the right of suit is only given to citizens of the United States by other acts of Congress.

If the citizenship of the original corporators of the defendant corporation may not be inquired into, it will not be possible to give affirmative effect to a material requirement of the jurisdictional act.

CHARLES B. HOWRY,
Assistant Attorney-General.
ALEX. PORTER MORSE,
Assistant Attorney.

164-686

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164-686

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1896.

THE UNITED STATES and the SIOUX NATION OR TRIBE OF INDIANS, *Appellants*, *v.* THE NORTHWESTERN EXPRESS, STAGE AND TRANSPORTATION COMPANY. } No. 213.

BRIEF FOR APPELLEE.

But a single objection is raised by the learned argument of the Assistant Attorney-General to the judgment of the Court of Claims in this case.

The Act of March 3, 1891 (1 Supp. R. S., 913; 26 Stat. L., 851), gives jurisdiction to the Court of Claims to adjudicate certain "claims for property of citizens of the United States taken or destroyed by Indians." The Court of Claims held (Record, p. 4) that the appellee, the claimant below, a corporation organized under the laws of the State of Minnesota, is a citizen of the United States within the meaning of this act. The appellants contend that such a corporation can not be deemed a citizen of the United States.

No case has been adjudicated under this statute, throwing light on this contention. *Johnson* v. *United States* (160 U. S., 546,) decides that a claimant must have been a citizen of the United States at the date of the depredation.

Counsel for the appellant concedes that under numerous decisions of this court, the claimant is a citizen of the State of Minnesota for the purpose of jurisdiction of the Federal courts, but attempts to apply to this case the distinction between State and Federal citizenship.

The appellee's response to this is that the same reasoning which makes a domestic corporation a citizen of the State of its origin for purposes of jurisdiction under Constitution and statute makes such a corporation likewise a citizen of the United States for a like purpose under this statute.

In the case of *Railroad Company* v. *Letson* (2 How., 497), the first case declaring a corporation to be a citizen of the State of its creation, this court placed its decision upon the following ground (pp. 555, 557):

"A corporation, created by a State, to perform its functions under the authority of that State, and only suable there, though it may have members out of the State, seems to us to be a person, though an artificial one, inhabiting and belonging to that State, and therefore entitled, for the purpose of suing and being sued, to be deemed a citizen of that State.

* * * * * *

"But there is a broader ground upon which we desire to be understood, upon which we altogether rest our present judgment, although it may be maintained upon the narrower ground already suggested. It is, that a corporation created by and doing business in a particular State, is to be deemed to all intents and purposes as a person, although an artificial person, an inhabitant of the same State, for the purposes of its incorporation, capable of being treated as a citizen of that State, as much as a natural person. Like a citizen it makes contracts, and though in regard to what it may do in some particulars it differs from a natural person, and in this especially, the manner in which it can sue and be sued, it is substantially, within the meaning of the law, a citizen of the State which created it, and where its business is done, for all the purposes of suing and being sued. And in coming to this conclusion, as to the character of a corporation, we only make a natural inference from the language of this court upon another occasion, and assert no new principle. In the case of *Dartmouth College* v. *Woodward*, 4 Wheat. 636, this court says: 'A corporation is an artificial being, invisible, intangible, and existing

only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as were supposed best calculated to effect the object for which it was created. Among the most important are immortality, and if the expression may be allowed, individuality—properties, by which a perpetual succession of many persons are considered as the same, and may act as a single individual. They enable a corporation to manage its own affairs, and to hold property without the perplexing intricacies, the hazardous and endless necessity, of perpetual conveyances for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men in succession with these qualities and capacities, that corporations were invented and are in use. By these means a perpetual succession of individuals are capable of acting for the promotion of the particular object like one immortal being.'

"Again, The Providence Bank and Billings, 4 Pet. 514, it is said: 'The great object of an incorporation is to bestow the character and properties of individuality on a collective and changing body of men. This capacity is always given to such a body. Any privileges which may exempt it from the burdens common to individuals do not flow necessarily from the charter, but must be expressed in it, or they do not exist.' In that case, the bank was adjudged to be liable to a tax on its property as an individual. Lord Coke, says: 'Every corporation and body politic residing in any county, riding, city, or town corporate, or having lands or tenements in any shire, *qua propriis manibus et sumptibus possident et habent*, are said to be inhabitants there, within the purview of the statute.' In the case of *King* v. *Gardner*, in Cowper, 79, a corporation was decided by the Court of King's Bench, to come within the description of occupiers or inhabitants. In the Bank and Deveaux, the case relied upon most for the doctrines contended for by the plaintiff in error, it is said of a corporation, 'this ideal existence is considered as an inhabitant, when the general spirit and purposes of the law require it.' If it be so for the purposes of taxation, why is it not so for the purposes

of a suit in the circuit court of the United States, when the plaintiff has the proper residence? Certainly the spirit and purposes of the law require it. We confess our inability to reconcile these qualities of a corporation—residence, habitancy, and individuality, with the doctrine that a corporation aggregate can not be a citizen for the purposes of a suit in the courts of the United States, unless in consequence of a residence of all the corporators being of the State in which the suit is brought. When the corporation exercises its powers in the State which chartered it, that is its residence, and such an averment is sufficient to give the circuit courts jurisdiction."

In *Muller* v. *Dows* (94 U. S. 444, 445), this court gave another ground for sustaining the Federal jurisdiction over corporations as citizens of the States of their origin:

"A corporation itself can be a citizen of no State in the sense in which the word 'citizen' is used in the Constitution of the United States. A suit may be brought in the Federal courts by or against a corporation, but in such a case it is regarded as a suit brought by or against the stockholders of the corporation; and, for the purposes of jurisdiction, it is conclusively presumed that all the stockholders are citizens of the State, which, by its laws, created the corporation."

In *Paul* v. *Virginia* (8 Wal., 168), the court draw the distinction between the immunities of citizenship under Article IV, Section 2 of the Constitution and the right, based on citizenship, of suing in Federal courts, saying (p. 177):

"The answer which readily occurs to the objection founded upon the first clause consists in the fact that corporations are not citizens within its meaning. The term citizens as there used applies only to natural persons, members of the body politic, owing allegiance to the State, not to artificial persons created by the legislature, and possessing only the attributes which the legislature has prescribed. It is true that it has been held that where contracts or rights of property are to be enforced by or against corporations, the courts of the United States will, for the purpose of maintaining jurisdiction,

consider the corporation as representing citizens of the State under the laws of which it is created, and to this extent will treat a corporation as a citizen within the clause of the Constitution extending the judicial power of the United States to controversies between citizens of different States."

In *Insurance Co.* v. *Morse* (20 Wal., 445), this court said (pp. 453, 455):

"It has also been held many times, that a corporation is a citizen of the State by which it is created, and in which its principal place of business is situated, so far as that it can sue and be sued in the Federal courts. This court has repeatedly held that a corporation was a citizen of the State creating it, within the clause of the Constitution extending the jurisdiction of the Federal courts to citizens of different States.

* * * * * *

"A corporation has the same right to the protection of the laws as a natural citizen, and the same right to appeal to all the courts of the country. The rights of an individual are not superior in this respect to that of a corporation."

In *Steamship Co.* v. *Tugman* (106 U. S., 118), it was held that a corporation of a foreign State is a citizen of such State for purposes of Federal jurisdiction, the court saying:

"Upon this branch of the case it is, therefore, only necessary to say that if the individual members of a corporation, created by the laws of one of the United States, are, for purposes of suit by or against it in the courts of the Union, conclusively presumed to be citizens of the State by whose laws that corporation is created and exists, it would seem to follow, logically, that the members of a corporation, created by the laws of a foreign State, should, for like purposes, be conclusively presumed to be citizens or subjects of such foreign State. Consequently, a corporation of a foreign State is, for purposes of jurisdiction in the courts of the United States, to be deemed, constructively, a citizen or subject of such State."

See also *Marshall* v. *Railroad Co.*, 16 How., 314; *Rail-*

road Co. v. *Wheeler*, 1 Bl., 286; *Railway Co.* v. *Whitton*, 13 Wal., 270; Spear on Federal Judiciary, 166; Dillon on Removal of Causes, 5th ed., § 103.

An interesting discussion of this subject is found in an article entitled, "The Citizenship of Corporations," by Samuel T. Spear, 16 Albany L. J., 344.

The point of discussion in all these cases is chiefly whether a corporation may be called a "citizen" and, as such be admitted to a jurisdiction limited by that word. While the question was particularly confined to citizenship of a State of the Union or a foreign State, the reasons for the decisions are upon the general ground that a corporation may be classed as a citizen and not upon the particular ground specially applicable to its citizenship of a State. The reasons equally apply to its classification as a citizen of the United States.

Under the Act of 1891, as well as under those construed in these decisions, the question is the same,—whether corporations shall have the same judicial remedies as natural perons, under the description of "citizens." The authorities cited furnish a complete answer.

Numerous cases exist in the statutes and treaties of the United States where the words "citizens of the United States" are construed to include corporations.

The right to purchase mineral deposits in the public lands is conferred upon "citizens of the United States and those who have declared their intention to become such." (§ 2319 R. S.) Section 2321 declares the method of proof of citizenship.

"Sec. 2321. Proof of citizenship, under this chapter, may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge, or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any State or Territory

thereof, by the filing of a certified copy of their charter or certificate of incorporation."

It is here assumed that corporations are within the description of citizens of the United States and it was only necessary to indicate the nature of the proofs by which the citizenship should be established. This is a legislative construction of the term.

In the decision of cases under the French Spoliation Act of January 20, 1885 (1st Suppl. R. S., 2d ed., 471), where the relief was confined to "such citizens of the United States as had valid claims to indemnity," the Court of Claims made no distinction in the jurisdiction exercised over claims of natural persons and corporations (*vide* 26 Stat. L., 905, 907).

In an extended series of treaties a similar use of the term "citizens of the United States," as including corporations, is to be found. In the treaty between the United States and Mexico relative to the adjustment of unsettled claims (15 Stat. L., 679, 680), jurisdiction is granted to a commission to consider:

"All claims on the part of corporations, companies, or private individuals, citizens of the United States, upon the government of the Mexican Republic."

Similar terms are used in the treaty with Venezuela (16 Stat. L., 713, 714); with Peru (16 Stat. L., 751, 752); with Great Britain (17 Stat. L., 863, 867), and with France (21 Stat. L., 673, 674). The meaning of the term "citizen" by the treaty-making branch of the Government appears uniformly to have included corporations.

In the appellants' brief an effort is made to assign as a reason for denying jurisdiction in Indian depredation cases to domestic corporations, that aliens may thereby become the recipients of the bounty of the United States.

It is not necessary to discuss the question whether the remedy afforded by the Act of March 3, 1891, is a bounty; this whole act was very fully considered at the last term

of this court in the cases of *Leighton* v. *United States* and *Marks* v. *United States* (161 U. S., 291, 297) and was then shown to give a remedy for long existing, but neglected, rights. It is a sufficent answer to this observation to say that this reason would be of equal force against the doctrine announced by this court in the numerous cases already cited, that a domestic corporation may sue in a Federal Court. Some or all of the shareholders in such a corporation may be of the same State as some or all of the other parties to the suit, but this court has not found this a sufficient reason for denying the jurisdiction of the Federal Courts, if the corporation had its origin in a different State from that of the opposing parties. Nor should a similar right be denied in this case. This corporation should be given "the same right to the protection of the laws as a natural citizen and the same right to appeal to all the courts of the country."

Summary.

It is thus seen:

1. That this court recognizes a corporation for purposes of judicial remedy as a citizen of the State creating it.
2. That this court recognizes a foreign corporation, for the same purpose, as a citizen of the country creating it.
3. That for purposes of judicial remedy this court has declared that "the rights of an individual are not superior in this respect to that of a corporation."
4. That statutes of the United States include corporations under the designation, "citizens of the United States."
5. That numerous treaties include corporations in the same class.

To hold that, for purposes of a judicial remedy under the Act of March 3, 1891, a corporation is not a citizen of the United States is to draw a distinction not warranted by sound legal reasoning.

JOHN B. SANBORN,
CHARLES KING,
WILLIAM B. KING,
Attorneys and Counsel for Appellee.

164 U.S. 691.

164-691

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1896.

Ex Parte

CHARLES F. JONES,

Petitioner.

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1. Motion for rule to show cause.
2. Petition for Writ of Mandamus, and brief in support of same.
3. Certified copy of record.

F. A. BROOKS,

Attorney for Petitioner.

1 Motion for rule to show cause.

Supreme Court of the United States.

OCTOBER TERM, 1896.

Ex parte

CHARLES F. JONES, *Petitioner.*

MOTION.

And now, to wit, this 7 th day of ~~November~~ Decem ber, 1896, comes the above-named petitioner and moves this Honorable Court for a rule to be issued to the Honorable the Judges of the Circuit Court of Appeals of the United States for the First Circuit, requiring them on a day to be named therein to show cause before this Honorable Court why a writ of mandamus should not be issued pursuant to the statute in such case made and provided, commanding them to allow the appeal to this Honorable Court, claimed by the petitioner, from the decree of said Circuit Court of Appeals, made and entered by it in the cause of Charles F. Jones, complainant in equity, against the Merchants National Bank of Boston, on the 23d day of October, 1896; and that a citation be issued to the said Merchants National Bank as appellee, requiring it to appear before this Honorable Court and show cause why said decree should not be corrected as prayed for by the petitioner.

By his Attorney,

F. A. BROOKS.

2 Petition for writ of mandamus and brief in support of same.

Supreme Court of the United States.

OCTOBER TERM, 1896.

Ex parte

CHARLES F. JONES, *Petitioner.*

To the Honorable the Justices of the Supreme Court of the United States:

Your petitioner, Charles F. Jones, respectfully shows:

1. That on the 4th day of June, 1894, he filed his certain bill of complaint on the equity side of the Circuit Court of the United States for the District of Massachusetts, against the Merchants National Bank of Boston, alleging, among other things, that your petitioner was a citizen of the State of Pennsylvania, and that the said Merchants National Bank, defendant, was a corporation duly established under the laws of the United States, having its place of business at Boston, in said district of Massachusetts, and a citizen of the State of Massachusetts;

That your petitioner, by the consideration of the justices of the said Circuit Court, holden at Boston, within and for said district, on the 18th day of July, 1887, recovered judgment against one William C. N. Swift, of New Bedford, in said district, in an action of contract for the sum of $18,820 as damages and costs of suit taxed at $56.82, or in all for the sum of $18,876.82, the said action of contract being action No. 2435 as docketed on the law side of said Circuit Court;

That no execution or other legal process was ever taken out or issued upon said judgment, but that on the 19th day of July, 1887, the said judgment debtor Swift paid the amount of said judgment into the hands of John G. Stetson, Esq., he then being the clerk of said Circuit Court.

That the said Stetson received said sum as the clerk or agent of said Circuit Court, and upon receiving the same entered satisfaction of said judgment upon the docket of said Court in the said action at law;

That the money so received by said Stetson in satisfaction of said judgment was by him turned over to and deposited with the said Merchants National Bank, the above-named defendant;

That the sum so received of the judgment debtor Swift by said Stetson, and by him passed over to said bank, was, as he is advised and believes, held by said bank for the use and benefit of your petitioner, the plaintiff in the said action at law, or his assigns, and that the said bank as depositary of said money became liable to account therefor directly to your petitioner or his assigns;

That the said Stetson ceased to be clerk of said Circuit Court on the 6th day of September, 1892, and had been succeeded in that office by Alexander H. Trowbridge, Esq., who still continues to be the clerk of said Court;

That your petitioner, before bringing the said bill of complaint, had applied to said Trowbridge and requested him to instruct or authorize the said bank to pay said money to your petitioner, or to draw his check as clerk of said Court in favor of your petitioner upon said bank for the amount deposited with it as aforesaid by said Stetson, but that the said Trowbridge had declined to do so;

That thereupon your petitioner brought his said bill of complaint against said bank, charging therein that said bank had become liable to account for said money directly to your petitioner, as having come into possession thereof for the use and benefit of your petitioner as judgment creditor in the said action at law;

That said Stetson and Trowbridge, as also the cashier of said bank, were joined as defendants to said bill of complaint for purposes of discovery only, with a statement in the bill itself to the effect that no other relief was sought as against the said Stetson or Trowbridge. They made the discovery required, and the bill was thereupon dismissed or discontinued as to them.

2. And your petitioner shows that upon the filing of said bill of complaint, to wit, on the 4th day of June, 1894, the usual process of subpœna was issued from the clerk's office of said Circuit Court,

directed to said defendants, and was served upon the said defendants as by law required;

That the said Merchants National Bank appeared in said cause, and on the 11th day of July, 1894, filed its demurrer to said bill of complaint;

That the cashier of said bank, Alonzo P. Weeks, who had been joined as a party to said bill as the only person or officer connected with the defendant corporation who possessed the information necessary to enable him to make the discovery specially called for by interrogatories specified in said bill of complaint to be answered by said defendant bank, also appeared and demurred to said bill at the same time, upon the same grounds set forth in the demurrer of the defendant corporation, and also upon the ground that he had been improperly joined as a defendant to said bill.

The other two persons named as defendants, Stetson and Trowbridge, appeared and answered, making the discovery sought for, and the bill was thereupon dismissed as to them.

The demurrers of the defendant bank and its cashier were set down for argument by your petitioner and heard by the said Circuit Court; and that Court sustained said demurrers, and on the 1st day of April, 1896, made and entered a final decree in said cause, dismissing the said bill of complaint with costs.

3. From that final decree dismissing his bill of complaint, your petitioner duly appealed to the Circuit Court of Appeals for the First Circuit, and duly entered his said appeal in said Circuit Court of Appeals, and said appeal was heard by said Court of Appeals, on the 13th day of October, 1896, and said Court of Appeals, by its decision or decree made and entered in said appeal cause Oct. 23d, affirmed the decree of said Circuit Court, dismissing the said bill of complaint.

From this decree of said Circuit Court of Appeals, communicated to your petitioner on the 23d day of October, 1896, your petitioner on the same day claimed an appeal to the Supreme Court of the United States, and presented his petition to said Circuit Court of Appeals for allowance by it of such appeal, accompanied with an

assignment of errors in said decision, and with a good and sufficient appeal bond, as by law required.

4. The Circuit Court of Appeals received the application of your petitioner for an appeal to this Honorable Court, but denied the same, and entered an order in said appeal cause in the words following, to wit:

"Ordered: the appeal asked for in this cause is denied, for the reason that under the statutes it is not appealable, and a mandate will issue forthwith."

And your petitioner shows that the statute referred to by the Court in its order denying the appeal is the fourth section of the Act of Aug. 13th, 1888 (25 Stats., p. 436), which reads as follows: —

"SECT. 4. That all national banking associations, established under the laws of the United States, shall, for the purposes of all actions by or against them, real, personal or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located; and in such cases the Circuit and District Courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same state."

5. And your petitioner shows that he is advised and believes that he is entitled, under the laws of the United States, to have the decree of the said Circuit Court of Appeals, made on the 24th day of October last, revised by this Honorable Court, as claimed by his petition for the allowance by said Court of Appeals of his appeal therefrom, presented to said Court of Appeals by him as aforesaid, Oct. 25th, 1896, and denied by said Court of Appeals.

Wherefore your petitioner respectfully prays this Honorable Court to issue its writ of mandamus in favor of your petitioner, to be directed to the judges of said Court of Appeals for the First Circuit, commanding them to allow the appeal so claimed by your petitioner, and to issue a citation to the said Merchants National Bank of Boston, the defendant corporation, in the usual form, as appellee in said cause.

CHARLES F. JONES,

by his Attorney, F. A. BROOKS.

UNITED STATES OF AMERICA,

DISTRICT OF MASSACHUSETTS, ss.

I, Charles A. Gregory, being duly sworn, depose and say that I have read the foregoing petition and know the contents thereof, and the same is true according to the best of my knowledge, information and belief. The reason why this petition is verified by me is that I am the assignee under Charles F. Jones of the demand in suit against the Merchants National Bank of Boston, referred to in said petition, and am familiar with the proceedings taken in said cause, and the said Jones is not.

CHARLES A. GREGORY.

Sworn to and subscribed before me this 9th day of November, 1896.

[SEAL]

ELLIOTT J. HYDE,
Notary Public.

Supreme Court of the United States.

OCTOBER TERM, 1896.

Ex parte

CHARLES F. JONES, *Petitioner.*

BRIEF IN SUPPORT OF MOTION FOR RULE TO SHOW CAUSE WHY A MANDAMUS SHOULD NOT ISSUE IN PURSUANCE OF THE PETITION THEREFOR.

STATEMENT.

This is a motion or petition for a rule to be issued to the Judges of the Circuit Court of Appeals of the First Circuit, requiring them to show cause why a writ of mandamus should not be issued commanding them to allow the appeal claimed by the petitioner, Charles F. Jones, above named, to this Honorable Court, from the decree of said Court of Appeals, made and entered on the 23d day of October, 1896, in the cause of Charles F. Jones, Complainant, against the Merchants National Bank of Boston *et al.*, Defendants.

From the petition for said writ of mandamus filed herewith it appears that the petitioner was plaintiff in a certain action at law upon contract, brought by him in the Circuit Court of the United States for the District of Massachusetts, against one William C. N. Swift, a citizen of Massachusetts, and that as such plaintiff, on the 18th day of July, 1887, he had recovered judgment against the defendant Swift for the sum of $18,876.82; that no execution or other legal process having been issued or taken out upon said judgment, the judgment debtor Swift on the day following (July 19th, 1887) went to John G. Stetson, Esq., the then clerk of said Circuit Court, and paid him the amount of said judgment; that the said clerk thereupon entered said judgment satisfied upon the docket, took the money to the defendant bank, the said bank having been, as stated in the bill of complaint, a "*corporation duly estab-*

lished under the laws of the United States," and having its place of business in Boston in said district of Massachusetts, and there deposited the same; that afterward said Stetson, having ceased to be clerk of said Circuit Court, and having been succeeded in said office by Alex. H. Trowbridge, Esq., the petitioner (Jones) applied to said Trowbridge for the money so deposited by his predecessor with the defendant corporation, and requested him to order the same to be paid over to him, but the said Trowbridge refused to do so; that the petitioner then brought his suit in equity against the said National Bank, charging said bank with direct liability to him for the money deposited with it as aforesaid by said Stetson; that the said National Bank appeared in Court and resisted the said suit; that said Circuit Court heard said cause and entered a decree dismissing said bill of complaint; that this petitioner removed said cause by appeal to the Circuit Court of Appeals; that said Circuit Court of Appeals heard said appeal and affirmed the decree of said Circuit Court dismissing the bill of complaint; that thereupon this petitioner claimed an appeal from the decree of said Circuit Court of Appeals to this Honorable Court, and complied with the conditions requisite to such an appeal in cases where such an appeal would lie; and that said Circuit Court of Appeals ruled and held that in the present case no such appeal would lie from its decision to the Supreme Court of the United States, and for that reason denied the appeal which had been duly claimed by the petitioner as aforesaid.

LAW POINTS.

I.

If the jurisdiction of the Circuit Court in the case of Charles F. Jones, complainant in equity against the Merchants National Bank of Boston, depended *entirely* upon the opposite parties to said suit being citizens of different States (Act of March 3, 1891, Chap. 517, § 6), then the decree of the Circuit Court of Appeals in said cause, made Oct. 24th, 1896, was final, and not appealable to this Court; if such jurisdiction did not depend *entirely* upon the parties to said cause having been citizens of different States, then said decision was

appealable to this Court, and the Court of Appeals erred in its refusal to allow the appeal claimed.

II.

The Merchants National Bank, defendant in this case, was and is a corporation created and organized under the laws of the United States, and it has been repeatedly held by this Court that suits against such corporations are suits arising under the laws of the United States, as provided in the Acts of Congress relating to the judiciary now and heretofore in force.

Pacific R. R. Removal Cases, 115 U. S. 1.

In that case the Court, BRADLEY, J., said:

"If the case of Osborn *v.* the Bank is to be adhered to as a sound exposition of the Constitution, there is no escape from the conclusion that these suits against the plaintiffs in error, considering said plaintiffs as corporations created by and organized under the Acts of Congress referred to . . . were and are suits arising under the laws of the United States."

In the case of Northern Pacific Railroad *v.* Amato, 144 U. S. 465, this Court, in its opinion, BLATCHFORD, J., said:

"The jurisdiction of the Circuit Court in this case depended upon the fact that the defendant, being a corporation created by an Act of Congress, the suit arose under a law of the United States, without reference to the citizenship of the plaintiff. His citizenship is not mentioned in the complaint or in the petition for removal . . . Section 6 of the Act of 1891 provides that in all cases not therein before in that section made final, *there shall be of right an appeal or writ of error or review of the case by the Supreme Court of the United States*, where the matter in controversy shall exceed one thousand dollars besides costs. Under that provision . . . the defendant had a right to a writ of error from this Court."

In Union Pacific Railroad Co. *v.* Harris, 158 U. S. 326, the Court (FULLER, C. J.) said:

"The complaint alleged Harris to be a citizen of the State of Colorado, and complained of the Union Pacific R. R. Co., defendant, which was heretofore, and now is, chartered and organized under and by virtue of the laws of the United States . . . and is now and was . . . a citizen of the State of Nebraska.

The motion to dismiss is made upon the ground that the judgment of the Circuit Court of Appeals was final, inasmuch as the jurisdiction was dependent upon the opposite parties being citizens of different States. As, however, the judgments of the Circuit Court of Appeals are final in this class of cases, only when the jurisdiction is dependent *entirely* upon the opposite parties to the suit in controversy being aliens and citizens of the United States or citizens of different States, plaintiff in error insists that this judgment was not final, since the jurisdiction depended not *solely* on diverse citizenship, but also upon the fact that the plaintiff in error was a Federal corporation. . . . It is not for us to inquire why writs of error to Circuit Courts of Appeals for damages for negligence of railroad corporations should be allowed simply because the corporations are chartered under the laws of the United States, in a statute whose object was to relieve an overburdened Court, *since such is the effect of the statute according to its plain language.*"

III.

The petitioner was entitled to the appeal claimed as a matter of right.

Section 692, Rev. Stats. U. S.

Ex parte Jordan, 94 U. S. 248.

Ex parte S. & N. A. Railroad Co., 95 U. S. 221.

IV.

It is respectfully submitted that this motion of the petitioner for a rule to show cause, etc., etc., should be granted.

F. A. BROOKS,

Attorney for Petitioner.

3 Certified copy of Record.

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